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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,004	07/31/2003	Thomas Hackl	037068.52641US	9537

23911 7590 12/19/2005  
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EXAMINER

KRAMER, DEVON C

ART UNIT PAPER NUMBER

3683

DATE MAILED: 12/19/2005

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**GROUP 3600**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/631,004  
Filing Date: July 31, 2003  
Appellant(s): HACKL, THOMAS

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Jeffrey Sanok  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 10/11/05 appealing from the Office action mailed 3/10/05.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seto (2002/0152015) in view of Chakraborty et al (5839534).

Claims 3-4, 5-6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seto (2002/0152015) in view of Chakraborty et al (5839534).

Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seto (2002/0152015) in view of Chakraborty et al (5839534) and further in view of Wieder et al (5864285).

#### **(10) Response to Argument**

On pages 4-5 of Appellant's arguments it is stated, that Seto teaches an adaptive cruise control system for automotive (not commercial) vehicles and does not disclose or suggest the use of an additional, active retarding brake, but rather utilizes a passive engine torque control for decelerating the automobile under non-urgent circumstances. Please note that appellant is arguing the references separately on page 4, and one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Further, appellant states that Seto does not teach a brake system for commercial vehicles. Please note that brake systems for both regular automobiles and commercial vehicles are substantially the same, the only differences generally being the size of the parts.

The invention of Seto utilizes both a friction brake and an engine braking to control the speed of a vehicle. Please note that the 103 rejection, using Chakraborty, was used by the examiner to teach the interchangeability of using engine brakes, exhaust brakes, hydraulic retarders, and electric retarders as retarders in vehicles. (See Chakraborty Col. 7 lines 24-29)

In paragraph 31 of Seto it is explained how the torque control brake and friction brakes work and cooperate in order to brake the vehicle. During high urgency situations (close preceding vehicle) both torque-engine braking and friction braking (blending) are used, during regular braking when there is a low-urgency, only the torque-engine braking is used.

On page 5 of the brief appellant argues that Seto lacks the teaching of an electronically controlled brake system. Please note that this feature is clearly taught by Seto because an electronic controller and CPU are used to control the vehicle, see figures 1 and 4. The electronic controller controls the brake fluid control system.

Again on page 6 of the brief, appellant is arguing the references separately. Chakraborty is used to teach the different types of retarders used in vehicles and not to teach the blending of friction brakes and a retarding brake based on an urgency signal.

Appellant's arguments with respect to claims 5-8 and 11 are based on the previous arguments to claims 1 and 9.

#### **(11) Related Proceeding(s) Appendix**

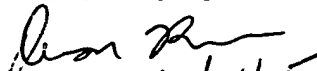
No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Devon Kramer

  
12/14/05

**DEVON C. KRAMER**  
**PATENT EXAMINER**

Conferees:

Robert Siconolfi

Robert McClellan